IN THE HIGH COURT OF JUDICATURE
FOR RAJASTHAN AT JAIPUR

S.B. Civil Writ Petition No.2238/02

Union of India Vs. Municipal Council, Jhalawar & Ors

Date of Order :: 19th February, 2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri B.N. Sandu, Advocate for petitioner.

Shri Subhash Jain, Advocate for respondent.

REPORTABLE

The Union of India has come up in this writ petition against the order dated 2.7.1996 passed by Estate Officer (SDM Jhalawar) and dated 10.10.2001 by the Appellate Authority (District Judge, Jhalawar) respectively under Sections 4 and 9 of the Rajasthan Public Premises (Eviction of Unauthorised Occupants) Act, 1964 (for short `the Act of 1964).

Factual matrix of the case is

that the Municipal Council, Jhalawar filed an application under Section 4 of the Act of 1964 inter alia on the premise that the building in which the post office, Mangalpur at Jhalawar was housed was let out to Union of India by the Municipality on 1.1.68 at the monthly rent of Rs.75/-. The Union Government owes to the Council payment of sum of Rs.4,500/- towards arrears of rent as on 19.1.95. It was therefore prayed that the order for eviction of the Post Office be passed and vacant possession of the building should be ordered to be handed over to the Municipal Council.

The Union of India filed reply to the aforesaid application on 6.8.1986, inter alia, asserting therein that it was not a tenant of Municipal Council,

Jhalawar in the aforesaid building nor has it taken the said building on rent from the Municipal Council on 1.1.68 as alleged. Part of the building was being used as post office and other part, as residence of the post master for last so many years and in any case, much prior to 1.1.68. Ownership of the said building does not vest in the Municipal Council nor does the Municipal Council is having title over the same. It has therefore no right to get the petitioner evicted from the said building. In fact, the case of the Union Government was that the post office was situated in that building for last more than 60 years. This building earlier belonged to the erst-while State of Bhilwara and the State had constructed the same for the purpose of post office.

With the merger of the States into the unified State of Rajasthan and then the Union of India, the ownership of the building has come to be vested in the Union of India. In any case, this can be a contentious issue only between the State Government and the Union of India and the Municipal Council has nothing to do with the ownership of the building. It was therefore prayed that the application filed by the Municipal Board be rejected.

The learned Sub Divisional Magistrate, Bhilwara in exercise of his powers as Estate Officer by his order dated 2.7.96 held that the building in question was the property of Municipal Board, Bhilwara, and that the petitioner was liable to pay to the Council monthly rent. It concluded that the petitioner

had deposited the rent with the Municipal Council on 1.1.68 and thereafter failed to make payment of the rent. The witness of the petitioners DW-1 had also in his statement stated that the post office had been making payment of the rent to the Municipal Council. But later the Union of India gave a proposal for purchasing the said building from the Municipal Council. This proves that this building was property of the Municipal Council and the post office was liable to be evicted from the same. It was, therefore, directed that the petitioner should vacate the building premises within 30 days or else action be taken against them for eviction in accordance with the provisions of Section 5 of the Act.

The petitioner filed an appeal

before the Appellate Authority (District Judge, Jhalawar) against the aforesaid order dated 2.7.96, who by his order dated 10.10.2001 however partly allowed the appeal and held that the Estate Officer has not given any finding whether the tenancy had been determined by the Union of India or any notice for determination of tenancy has been served by the Council upon Union of India. Possession of the petitioner, therefore cannot be described as unauthorised occupation and the order of eviction passed on 2.7.96 was therefore unsustainable in law. Accordingly the order dated 2.7.96 was set aside and matter in effect stood remanded back to the Estate Officer again for decision afresh. The Union of India has filed the

present writ petition against the aforesaid two orders dated 2.7.96 and 10.10.2001.

I have heard Shri B.N. Sandu, the learned counsel for the petitioner and Shri Subhash Jain, the learned counsel for the Municipal Council and perused the material on record.

Learned counsel for the petitioner Shri B.N. Sandu, has argued that the building in question has been in possession of and used for the post office. It is located in Brijnagar area known as Post Office, Mangalpura. The ex-ruler of the then State of Bhilwara has constructed the said building in the year 1936 and ever since it is being used by the post office. Thereafter the State of Bhilwara merged into the State of

Rajputana, which was later reorganised as State of Rajasthan. The State of Rajasthan on attainment of freedom by the nation became Part-B State of Union of India. With the adoption of the Constitution of India, the said building came to be vested in Union of India by virtue of Article 295 of the Constitution. The Municipal Council, Bhilwara illegally raised a demand of Rs.4,500/- as arrears of rent for the period from 1.7.68 till 31.8.1982. Only because the Municipal Council raised the demand and the petitioner did not make payment of the same, the Estate Officer and, for that matter, the Appellate Authority does not get the jurisdiction to declare the petitioner Union of India as tenant of the Municipal Council.

Neither the Estate Officer, nor the Appellate Authority examined the pointed arguments raised by the petitioner with regard to Article 295 of the Constitution of India that the property in question came to be vested in the Union Government and therefore it could not be adjudged as tenant of the respondent Municipal Council. Even if by mistake, the officials of the postal department made payment of rent for a particular month to the Municipal Council, that by its cannot be taken as a conclusive proof of the ownership of the Municipal Council. As regards the question of title, if at all the Municipal Council claims to possess the title of the building in question, it can do so only by filing a Civil Suit in the appropriate Court of law. The learned

Estate Officer as well as the Appellate Authority have therefore erred in law in not requiring the Municipal Council to first get its title or ownership over the building in question established before proceeding to examine the matter. He, therefore prayed that the writ petition be allowed and the impugned orders be set aside and the property in question should be declared as that of Union of India.

Shri Subhash Jain, the learned counsel for the respondent Municipal Council opposed the writ petition and argued that the Estate Officer has passed the order dated 2.7.96 after providing full opportunity of hearing to the petitioner in as much as the petitioner had the opportunity to produce evidence, both documentary and oral, and

the petitioner actually examined certain witnesses in support of its case. Findings arrived at by the learned Estate Officer that the petitioner was tenant in the building of Municipal Council has not been reversed by the learned Appellate Authority. This being a finding of fact cannot be reappreciated and reopened by this Court in exercise of its writ jurisdiction under Article 227 of the Constitution of India. He argued that Article 295 of the Constitution would not be attracted to the facts of this case because the disputed property was not given to the post office by the erstwhile rulers of the State of Bhilwara either under any covenant or rule or agreement. He further argued that this objection has been taken by the Union of India for the

first time in the writ petition. Moreover, this argument also ignores the fact that the petitioners themselves had once paid the monthly rent to the Municipal Council. It is settled law that if some one has acknowledged himself as tenant, he shall always be treated to be a tenant. In spite of ample opportunities, if the petitioner failed to prove its title or ownership over the building in question, it cannot be allowed to continue in possession of the building in question. It was therefore prayed that the writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties and perused the material on record.

First and foremost, I am called upon to consider whether the argument on the strength of Article 295 of the Constitution, which the petitioners are raising in the writ petition was raised by them before the learned Estate Officer or this is for the first time that they are raising this argument for this Court. A copy of the reply which the petitioners filed before the Estate Officer has been placed on record at Annexure-1. A perusal of this reply reveals that the petitioner Union of India has raised the objection with regard to competence and jurisdiction of the Estate Officer to entertain the application filed by the respondent. Their categorical plea before the Estate Officer was that the building in question was in possession of the post

office for last more than 60 years. Erst while rulers of the Bhilwara State had constructed this building for the purpose of post office and residence of the post master. With the merger of the State in the Union of India, the title of the building came to be transfered and vested in the concerned department which had the possession of the same and therefore this building, as it is, became the property of the Union of India. It was stated that Municipal Board, Jhalawar does not have either the title or ownership of the said building. It was asserted that this dispute essentially lie only between the State Government and the Union of India and the Municipal Council has no role in the matter. Similarly in the appeal also this plea was reiterated by the Union of

India in which it was stated that the disputed building was got constructed by the erstwhile State of Bhilwara in the year 1936 and ever since it was being used for the purpose of post office. The building came to be vested in the Union of India by virtue of Articles 294, 295 and 296 of the Constitution of India. Reference was made to the order dated 19.10.1993 passed by Dy. Secretary to the Government, in which the State Government clarified that the property which was in possession of the Postal Department prior to enforcement of the Constitution, shall as per Article 295 of the Constitution be deemed to be property of the Postal Department. In the light of these pleas so specifically stated by petitioner Union of India it cannot be said that the

petitioners are seeking to raise this issue for the first time before this Court. Such argument of the respondents is therefore liable to be rejected.

Adverting now to the main argument that has been dealt with by the Estate Officer and the Appellate Authority, I find that the Estate Officer has remained unduly influenced by the fact that the petitioner had once deposited the arrears of rent with the Municipal Council, Jhalawar. Certain correspondence which was exchanged between the post office and the Municipal Council on the one hand and the Municipal Council and the Director of Local Bodies for Rajasthan, on the other, were also noticed by the Estate Officer. PW-2, Ramesh Chandra Sharma, who was examined

as witness on behalf of Municipal Council stated that the building in question was entered in the list of properties of the Municipal Council and was given to the post office but he could not vouchsafe for the fact that Jhalawar was known as Brijnagar during State times. He however stated that the post office building was also entered as the property of the Municipal Council. Although the rent in the past was deposited by the petitioner with the Municipal Council but no such rent was due to be paid since 1st January, 1968. DW-1 Deen Dayal Srivastava who was examined as a witness on behalf of petitioner also stated that he could not verify the fact that Jhalawar was known as Brijnagar during state times. However, Jhalawar State had given the building in

question to the post office on monthly rent of Rs.90/- which rent was later paid to the Municipal Council by the department. He further referred to the letter of the Government dated 19.10.93 according to which, it was clarified that such properties which were being used by the post office prior to commencement of the Constitution shall be by virtue of Article 295 of the Constitution deemed to be property of the postal department of the Union of India. The Estate Officer, in spite of having noticed all these arguments, refrained from giving any finding on the applicability of Article 295 of the Constitution of India and simply decided the matter by observing that when the postal department had made payment of the rent to the Municipal

Council, it could not question the title of the latter. Approach of the Estate Officer on this aspect of the matter was therefore far too perfunctory to merit approval. The Appellate Authority also dealt with the issue in a rather cursory manner. Even though the argument was pointedly raised in the appeal against the order passed by the Estate Officer and was noticed by learned appellate authority in para 4 of the judgment, but then he also did not much dwell upon that argument by giving the same reason which was given by the learned Estate Officer that once when the postal department had made payment of the rent, it could not be now allowed to assert that the property stood vested in the Union of India.

Before I proceed to examine the

merits of the arguments raised, it would be profitable to extract the provisions of Article 295 of the Constitution of India in extenso:-

> “295. Succession to property, assets, rights, liabilities and obligations in other cases.-(1) As from the commencement of this Constitution-
>
> (a) all properties and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to

any of the matters enumerated in the Union List, and

(b) all rights, liabilities and obligations of the Government of any Indian State corresponding to a State specified in Part B of the First Schedule, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Government of India, if the purposes for which such rights were acquired or liabilities or obligations were incurred before such commencement will thereafter be purposes of the Government of Indian relating to any of the matters enumerated in the Union List,

subject to any agreement entered into in that behalf by the Government of India with the Government of that State.

(2) Subject as aforesaid, the Government of each State specified in Part B of the First Schedule shall, as from the commencement of this Constitution, be the successor of the Government of the corresponding Indian State as regards all property and assets and all rights, liabilities and obligations, whether arising out of any contract or otherwise, other than those referred to in clause (1).”

Critical examination of the aforesaid provision would make it clear

that all properties and assets which immediately before the commencement of the Constitution were vested in any Indian State corresponding to a State specified in part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matter enumerated in the Union List. While the petitioner Union Government has asserted that the building in question was constructed by the erstwhile State of Jhalawar only for the purpose of post office, the case of the Municipal Council, Jhalawar is that it was given to the post office on rent basis. The Union of India had contended in its reply before the Estate Officer

that the post office was having possession of the building in question for last 60 years. It may be noted that reply was filed on 6.8.1986. The building is said to be in two parts, one part of it is used as a post office and the other for the residence of the post master. In appeal before the learned Appellate Authority the Union of India asserted that this building was constructed for that purpose, and in fact, was used, as a post office even before 1936.

What therefore we have to examine is that when the building is being used for the post office prior to commencement of the Constitution, whether the payment of rent made by the petitioner to the erst while State of Bhilwara and thereafter to the Municipal Council would

result in any other interpretation of Article 295(1)(a) then the one which can be taken on a plain reading thereof. The said provision clearly provides that “all properties and assets which immediately before such commencement were vested in any Indian State corresponding to a State specified in Part B of the First Schedule shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement will thereafter be purposes of the Union relating to any of the matter enumerated in the Union List.” It should be noted that the State of Rajasthan is a State specified in Part B of the First Schedule. Post and telegraph is a union subject having been enumerated in entry 31 of list 1 (union list) of the VIIth

Schedule to the Constitution of India. Assuming that the building in question, prior to commencement of the Constitution was vested in the erstwhile State of Jhalawar corresponding to the State of Rajasthan specified in Part B of the First Schedule, whether or not it would vest in the Union of India just because the post office prior to commencement of Constitution was making payment of certain amount as rent to the erstwhile State of Jhalawar and later, on that basis, for some time to the Municipal Council. Later part of clause (a) of sub-Article (1) of Article 295 clearly provides that such property shall vest in the Union, if the purposes for which such property and assets were held immediately before such commencement of the

Constitution will thereafter be purposes of the Union relating to any of the matters in Union List. There is no doubt that post and telegraph is a matter enumerated in the union list. What would therefore be the meaning and significance of the words “such property and assets were held” for the purposes of the union relating to any of the matters enumerated in the union list. The kind of the language that has been employed by the framers of the Constitution and the manner of its use namely- “if the purposes for which such property and assets were held” makes their intention clear that it is not necessary that such property should have been held by its occupant as it absolute owner. What is however more important is that its

occupant should have held such property for one of the purposes falling in the Union list. It would be inconsequential even if the occupant held such property as licensee or tenant of the erstwhile State. It is on account of the scheme evolved by the founding fathers at the time of commencement of the Constitution that the mere fact that such property and assets were held immediately before such commencement would have the effect of vesting such property in the Union Government provided of course the purpose for which they were being used for fall in one of the entries in the union list.

In my considered view, therefore, merely because the post office had been paying certain amount as rent to the erstwhile State of Jhalawar or such rent

continued to be paid till sometime thereafter by the post office to the Municipal Council, would not make any difference for the purpose of holding that such property and assets were held by the post office immediately before commencement of the Constitution for the purpose of post and telegraph which later became a union purpose in entry 31 of the union list namely- List-1 of VIIth Schedule to the Constitution. The learned Estate Officer and for that matter the learned Appellate Authority have both failed to address themselves to this significant question so pointedly raised by the Union of India before each one of them. The State of Rajasthan has rightly in its order dated 19.10.93 has acknowledged the building in question to

be the property of the Postal Department of the Union of India, reference of which was made by D.W. 1 Shri Deendayal Shrivastava the witness of the petitioner in his statement which was also noticed by learned Estate Officer in his order. And this explains why the State Government has chosen not to contest this writ petition. The Municipal Council, Jhalawar just because the building in question came to be entered in their records as the property of the Municipality by virtue of the fact that the same was got constructed by the erstwhile State of Jhalawar and was given on rent to the post office would not therefore become owner of such building.

The orders passed by the learned Estate Officer and the learned District Judge having omitted to consider this material aspect of the matter, therefore, suffer from error apparent on the face of the record so as to warrant interference by this Court in exercise of its writ jurisdiction under Article 226 and 227 of the Constitution of India. In the ordinary course, challenge to the aforesaid two orders having restricted the scope of this writ petition as a writ of certiorari, that should have been the end of the matter. But in the peculiar facts and circumstances of the case when I find that apart from writ of certiorari, the petitioner has also prayed for a writ of mandamus that the building in dispute be declared as the

property of Union of India by virtue of Article 295 of the Constitution and this being a writ petition filed both under Article 226 and 227 of the Constitution and sufficient material and evidence having come on record to substantiate what the petitioner is asserting, a further declaration to the effect that the building in question is the property of Union of India should issue.

In view of what has been discussed above, the present writ petition deserves to be allowed and is accordingly allowed. The impugned order dated 2.7.96 passed by the Estate Officer, Jhalawar and the order 10.10.2001 passed by the Appellate Authority are both set aside and the building in question is declared to be

the property of Union of India. Consequences to follow. There shall be no order as to costs.

(Mohammad Rafiq),J.

RS/-